

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:

HEATHER R. SMITH

Respondent.

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Supreme Court #SC93743

INFORMANT'S BRIEF

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STATEMENT OF JURISDICTION

This action is one in which the Chief Disciplinary Counsel is seeking to discipline an attorney licensed in the State of Missouri for violations of the Missouri Rules of Professional Conduct. Jurisdiction over attorney discipline matters is established by this Court's inherent authority to regulate the practice of law, Supreme Court Rule 5, this Court's common law, and Section 484.040 RSMo 2000.

STATEMENT OF FACTS

I. INTRODUCTION

Respondent Heather Renee Smith was licensed as an attorney in Missouri on September 19, 2001. **App. 5-23.** She is currently suspended from the practice of law pursuant to Rule 15.06(f). **App. 56; 76.** Since 2008, Respondent was a sole practitioner practicing primarily in the areas of family law and domestic law under the name of the Law Office of Heather R. Smith LLC in Liberty, Missouri. **App. 5-23.** Without notice to clients, in or about May 2012, Respondent abandoned her law practice. **App. 5-23.** Respondent's office phone number was terminated. Upon permanently shutting the doors to her law office, Respondent left no forwarding contact information for clients and other interested persons. **App. 5-23.** The local television station aired an investigative "Fox4 ProblemSolvers" news report on these matters. **App. 97.** Respondent ceased practicing law and obtained employment in the public sector unrelated to the practice of law. **App. 5-23.**

Throughout most of 2011 and 2012, Respondent had engaged in a pattern and repeated practice of professional misconduct, which primarily involves abandoning clients, failing to respond to client inquiries, misleading clients about the status of their respective legal matters, failing to refund unearned attorney fees, failing to exercise diligence and competence in representing clients, and failing to cooperate with the disciplinary authorities. **App. 5-23.**

From August 2011 to December 2012, a regional disciplinary committee investigated eleven separate disciplinary complaints against Respondent. In each instance, upon conclusion of the investigations, Informant determined, pursuant to Rule 5.11, that probable cause exists to believe that Respondent is guilty of professional misconduct with respect to each of the eleven complaints. **App. 5-23.**

II. FACTS DEEMED ADMITTED BY RESPONDENT

As a result of the procedural posture set forth in detail below, the Disciplinary Hearing Panel found that Respondent admitted the underlying factual basis for each of the eleven complaints. **App. 107-111.** Each of the complaints is summarized below.

Complaint of Kathy Mason

In February 2010, Kathy Mason hired Respondent for representation regarding a dissolution of marriage matter. Ms. Mason paid an advance deposit of \$3,000 to Respondent for work to be performed and related expenses. Respondent provided some preliminary legal work to Ms. Mason. In March 2011, Ms. Mason inquired about the status of the matter. Respondent represented to her client that everything was in order. However, the action had not yet been filed as of March 2011, despite the passage of over twelve months. In May 2011, Ms. Mason terminated Respondent. Ms. Mason requested a refund of the \$3,000 advance payment. Respondent failed and refused to refund the advance payment. Respondent failed and refused to provide an accounting of her alleged professional services provided to Ms. Mason. **App. 8-9.**

Complaint of Matthew Donnelly

In January 2010, Matthew Donnelly hired Respondent for representation regarding a dissolution of marriage matter. In September 2011, Mr. Donnelly's matter came up for trial. Respondent was not prepared for trial. Further, the judgment entered in the matter needed correction. Respondent failed to promptly follow up on this issue. Mr. Donnelly requested his file from Respondent. Respondent failed to deliver the file to the client. Respondent failed to contact Mr. Donnelly after the trial with respect to the finalization of post-trial matters that needed to be addressed. Respondent failed to respond to Mr. Donnelly's reasonable requests for information. The trial court scheduled a hearing in the matter in April 2012. Respondent failed to appear on the client's behalf. Respondent abandoned the representation of Mr. Donnelly without notice and without taking reasonable steps to protect her client's interests. **App. 9-10.**

Complaint of Laura Goff

In September 2009, Laura Goff hired Respondent for representation regarding a child support matter. Ms. Goff paid \$1,500 to Respondent as an advance deposit on the work to be performed and related expenses. Respondent failed to respond to Ms. Goff's multiple requests for information concerning the status of the legal matter. Respondent abandoned the representation of Ms. Goff without notice to Ms. Goff and without taking reasonable steps to protect Ms. Goff's interests. Ms. Goff requested a refund of the advance fee. Respondent failed to provide a refund, and has failed to provide an itemized accounting of any professional services provided to Ms. Goff. **App. 10-12.**

Complaint of Alana Stempel

In March of 2011, Alana Stempel hired Respondent for representation regarding a dissolution of marriage matter. Ms. Stempel paid an advance deposit of \$1,695 for the representation. By May 2012, the dissolution action had not been filed. Respondent failed to provide any legal work for the benefit of Ms. Stempel. Respondent failed to respond to Ms. Stempel's requests for information. Respondent abandoned the representation of Ms. Stempel without notice to Ms. Stempel and without taking reasonable steps to protect Ms. Stempel's interests. **App. 12.**

Complaint of Ginnesta Culp

In May of 2010, Ginnesta Culp hired Respondent for representation regarding an adoption. Ms. Culp (with the assistance of her grandfather) paid an advance deposit of \$1,800 for the representation. Respondent delayed for months in initiating the adoption process. Respondent did not provide the client with accurate information regarding the status of the matter. Respondent mislead the client into thinking a court proceeding had been initiated and that progress was being made, when in fact that was not the case. By May 2012, the adoption proceeding had not been filed. Respondent failed to provide any legal work for the benefit of Ms. Culp or her grandfather. Respondent abandoned the representation without notice to Ms. Culp and without taking any steps appropriate to protect Ms. Culp's interests. **App. 13-14.**

Complaint of April Myers

In December of 2011, April Myers hired Respondent for representation regarding a

visitation modification matter. Ms. Myers paid an advance deposit of \$1,500 for the representation. Respondent delayed for months in initiating the modification process. Respondent did not provide the client with accurate information regarding the status of the matter. Respondent mislead the client into thinking a court proceeding had been initiated and that progress was being made. By May 2012, the modification proceeding had not been filed. Respondent failed to provide any legal work for the benefit of Ms. Myers. Respondent abandoned the representation without notice to Ms. Myers without taking any steps appropriate to protect Ms. Myers's interests. **App. 14-15.**

Complaint of Miranda Campbell

In April of 2010, Miranda Campbell hired Respondent for representation regarding a custody and child support modification matter. Ms. Campbell paid an advance deposit of \$2,000 for the representation. Respondent did not provide any legal representation to Ms. Campbell after filing the motion for modification. Respondent delayed for months in obtaining a court date on the motion. Respondent did not provide the client with accurate information regarding the status of the matter. Respondent mislead the client into thinking a court hearing would occur and that progress was being made. Respondent abandoned the representation without notice to Ms. Campbell and without taking any steps appropriate to protect Ms. Campbell's interests. Respondent failed to refund any unearned portion of the advance fee. **App. 15-17.**

Complaint of Jay Whitworth

In December of 2011, Jay Whitworth hired Respondent for a dissolution of marriage

action. Mr. Whitworth paid an advance deposit of \$1,500 for the representation. Respondent did not provide any legal representation to Mr. Whitworth. Respondent delayed for months in initiating the legal proceeding. Respondent did not provide the client with adequate information regarding the status of the matter, and did not respond to the client's requests for information. Respondent abandoned the representation without notice to Ms. Whitworth and without taking any steps appropriate to protect Mr. Whitworth's interests. Respondent failed to refund any unearned portion of the advance fee. **App. 17-18.**

Complaint of Kalli Sherwood

In May of 2012, Kalli Sherwood hired Respondent for representation regarding a municipal court speeding ticket. Ms. Sherwood paid an advance deposit of \$300 for the representation and related expense. Respondent did not provide any legal representation to Ms. Sherwood. Respondent did not appear for the designated court date, causing the client's driving privileges to become suspended. Respondent did not provide the client with accurate information regarding the status of the matter. Respondent mislead the client into thinking the matter had been handled. Respondent abandoned the representation without notice to Ms. Sherwood without taking any steps appropriate to protect Ms. Sherwood's interests. Respondent failed to refund any unearned portion of the advance fee. **App. 18-19.**

Complaint of Bret Mortenson

In September of 2011, Bret Mortenson hired Respondent for representation regarding a dissolution of marriage action. Mr. Mortenson paid an advance deposit of \$2,000 for the representation. Respondent did not provide any legal representation to Mr. Mortenson.

Respondent did not provide the client with sufficient information regarding the status of the matter, and did not respond to the client's requests for information as to the status of the matter. Respondent has abandoned the representation without notice to Mr. Mortenson and without taking any steps appropriate to protect Mr. Mortenson's interests. Respondent failed to refund any unearned portion of the advance fee. Respondent's inaction caused Mr. Mortenson to sustain a default judgment. **App. 20-21.**

Complaint of OCDC

With respect to the ten matters identified above, Respondent was notified by the OCDC in writing of each of the complaints. In each instance, a written response from Respondent was requested. Respondent failed to provide to OCDC a response to eight of the ten complaints (i.e. every complaint other than Mason and Goff). In or about April of 2012, in accordance with the policy of the OCDC, Respondent was requested to meet in person with the Chief Disciplinary Counsel to address the frequency of the above complaints. Respondent failed to appear for the meeting. **App. 21-22.**

In May 2012, Respondent met in person with a representative of Informant. At such meeting, Respondent was given specific instruction to (a) provide written responses to all pending and future disciplinary complaints; (b) provide full cooperation with the disciplinary authorities in connection with the closure of Respondent's law practice; (c) close out the client trust account and to provide written records to confirm an appropriate accounting for all money into the account; (d) notify in writing all current clients of the closure of Respondent's law practice; (e) provide and maintain a means of telephone contact for all

current and former clients who may need to get in touch with Respondent throughout the remainder of 2012; (f) return all client files on pending legal matters; (g) return all unearned advanced fees; and (h) take such other steps as are reasonably necessary to protect the clients' interests upon withdrawal of further representation. Despite assurances that Respondent would handle these matters in a prompt, professional and diligent manner, Respondent failed to heed these requests and directions. Respondent failed to follow-up on these matters with Informant's representative. **App. 21-22.**

III. DETAILED PROCEDURAL HISTORY

On December 28, 2012, two copies of the Information and a related notice were mailed to Respondent. **App. 35-39.** One copy of the Information packet was mailed to the address last designated by Respondent on file with the Missouri Bar. **App. 38.** The other copy of the Information packet was mailed to an address believed to be a residential address for Respondent. **App. 39.** The package sent to the designated address was returned as undeliverable. **App. 38.** The package sent to the residential address was delivered to Respondent. The exact date of the delivery is not known, but it is believed to have been delivered to Respondent on or about December 31, 2012. **App. 39.**

A "Notice Pursuant to Rule 5.11, 5.13 and 5.14" was included within each Information packet sent to Respondent. **App. 35-39.** The Notice was likewise received by Respondent on or about December 31, 2012. **App. 35-39.** The Notice stated in relevant part:

**You are hereby notified that within thirty (30) days after the
service of the Information in this matter, an answer or other**

response is to be filed with the Chair, Missouri Advisory Committee, 217 E. McCarty Street, Jefferson City, Missouri, 65101. A copy shall be served on the counsel for the Informant and the Chief Disciplinary Counsel (Alan D. Pratzel, Chief Disciplinary Counsel, 3335 American Avenue, Jefferson City, Missouri 65109). **If an answer or other response is not timely filed, the information shall be filed in the Supreme Court as an information with notice of default. All charges shall be deemed admitted against you. The failure to file an answer or other response to the Information timely shall be deemed as consent by the respondent for this Court to enter an order disbarring respondent without further hearing or proceeding.**

* * *

In the event of default, you may be disbarred or indefinitely suspended, reprimanded or disciplined in any other manner the Supreme Court deems appropriate. Disbarment or suspension will result in forfeiture of your right to practice law in the State of Missouri. The failure to respond to the Information may be considered by the Court as grounds for imposing a harsher sanction than might otherwise be warranted by the violation charged.

(emphasis added). **App. 24-34.**

Respondent's Answer to the Information was due January 30, 2013. Respondent did not timely file an Answer to the Information. An undated copy of a purported "Answer" was received by the Advisory Committee on February 25, 2013, more than three weeks late. **App. 40.** The purported Answer was not accompanied by a request for leave to accept the pleading out of time. Respondent provided no explanation why the Answer was not timely submitted to the Advisory Committee. The Answer did not set forth any contact information for Respondent. **App. 40.** In other words, the Answer did not provide the disciplinary hearing panel with a phone number, a fax number, a mailing address or an e-mail address for Respondent. **App. 40.**

On March 1, 2013, counsel for Informant sent an e-mail to the Advisory Committee (with a copy to Respondent at her last known e-mail address, heathersmithlaw@aol.com¹) requesting Respondent's contact information. **App. 41.** The e-mail stated:

On behalf of the Informant, I respectfully request that either Ms. Smith provide an official mailing address and all other required contact information for all purposes herein and that she complies with Mo.Sup.Ct. Rule 6.01(b), or failing that, that the Respondent's Answer be stricken and a default entered herein.

App. 41.

Respondent did not respond to the e-mail. On behalf of the Advisory Committee, Legal Ethics Counsel responded to the e-mail by suggesting that Informant could submit a formal motion to strike the Answer and that such motion would be entertained and routed to the appropriate person for consideration. **App. 42.** Respondent was copied on the e-mail of Legal Ethics Counsel. Respondent, however, did not respond to Ms. Bentley's e-mail either.

A Disciplinary Hearing Panel was appointed on April 2, 2013. **App. 44-46.** A copy of the letter appointing the panel was sent to counsel for Informant and to Respondent. The record does not show Respondent's address for such notice. **App. 44-46.**

By e-mail dated April 11, 2013 to heathersmithlaw@aol.com and to Informant's

¹ Respondent designated heathersmithlaw@aol.com as her official e-mail address with the Missouri Bar. **App. 48.** Respondent used such e-mail address to communicate with Informant's counsel in February 2013. **App. 59.**

counsel, the presiding officer of the appointed Disciplinary Hearing Panel attempted to schedule a conference call regarding the disciplinary matter. **App. 62.** Respondent did not respond to the presiding officer's e-mail. Respondent's failure to respond caused the presiding officer of the Disciplinary Hearing Panel to send another e-mail dated April 18, 2013 to heathersmithlaw@aol.com, requesting a response from the Respondent along with contact information from the Respondent, including a phone number to conduct a telephone conference. **App. 61.** The e-mail from the presiding officer warned that Respondent's failure to provide contact information could result in a default. Respondent did not respond to the presiding officer's second e-mail.

On April 25, 2013, Informant filed a Motion to Strike Respondent's Answer. **App. 47-62.** Respondent received a copy of the Motion by US mail and e-mail. **App. 52.** Respondent did not submit a written response to the motion. The Informant's motion cited the following matters:

I. Background

This is an attorney disciplinary proceeding in which it is alleged that attorney Heather R. Smith ("Respondent") has abandoned her law license and the interests of numerous clients, many of whom have initiated the written complaints identified in the Information. Information ¶¶ 1 - 9. Informant also alleges that Respondent has severely hampered and disrupted this proceeding by her failure to cooperate with the efforts of the disciplinary authorities. Information

¶¶ 80 - 83.

As one illustration of this type of disruption caused by Respondent, Respondent has failed to provide updated information with respect to contact information, as required under Missouri Supreme Court Rule 6.01(b). See Information ¶ 6. Rule 6.01(b) provides that, by January 31st of each year, every attorney shall furnish an annual enrollment statement containing the lawyer's name, current mailing address, and current e-mail address. Further, Rule 6.01(b) affirmatively requires the lawyer to notify the clerk of the Missouri Supreme Court "of every change in the lawyer's current mailing or e-mail address."

Respondent's last designated address provided to the Missouri Bar is 12B Westwoods Dr., Liberty, MO 64068. However, since approximately June 2012, all mail sent to that address relating to this disciplinary matter (which has [been] well over a dozen pieces of correspondence) has been returned to the sender as undeliverable. See Exhibit A. Respondent's last designated e-mail address is heathersmithlaw@aol.com. See Exhibit B.

Respondent is currently suspended from the practice of law in Missouri for non-compliance with CLE requirements. Respondent is also delinquent in the payment of 2013 annual bar enrollment dues, and

faces a second form of suspension regarding non-payment of bar dues in the near future, e.g. on or about May 1st.

II. Respondent's Answer

Respondent's Answer is attached hereto as Exhibit D. The Answer omits any contact information for Respondent. Ironically, however, Respondent's Answer [footnote omitted] does admit the matters set forth in paragraph 6 of the Information, which alleges in relevant part as follows:

6. The address designated in Respondent's most recent registration with The Missouri Bar is 12B Westwoods Dr., Liberty, MO 64068. However, Respondent vacated such office address on or about May 1, 2012. On or about May 31, 2012, Respondent was instructed by a representative of Informant to provide an updated address with the Missouri Bar in accordance with Mo.Sup.Ct.R. 6.01(b). Respondent has failed to provide an updated address or forwarding address for official and professional correspondence. Respondent's actual, current whereabouts are unknown.

App. 47-62.

The presiding officer of the disciplinary hearing panel scheduled a hearing on the

Motion To Strike. **App. 63.** The hearing took place on May 15, 2013. Respondent was present in person for the hearing. At the hearing Respondent admitted that she had not updated her address with the Missouri Bar even though she no longer received mail at her former office address. **App. 64-81.** At the hearing Respondent promised to update her e-mail address, and also promised to update her mailing address with the Missouri Bar. **App. 68.**

At the hearing on the Motion to Strike Respondent's Answer the following exchange occurred:

Counsel for Informant:

. . . I think we had a communication problem and a cooperation problem. If there's an opportunity to cure that, I would like to either hold my motion in abeyance or hold a ruling on that in abeyance or to do something to allow about a 15-day period to correct these problems that we have, including proof that the Missouri Bar has been notified in writing of any change of contact information. And something filed herein with either the contact information of your attorney, as well as the contact information that you would provide in this matter. If you would agree to do that, I would be inclined to, as I say, hold my motion in abeyance.

Respondent:

I will do that.

App. 71.

* * *

Hearing Officer:

. . . So here is my view of this. We've had to have this hearing. You know, we want to do everything to have this determined on the merits, and have you have a fair opportunity.

Respondent:

Right.

Hearing Officer:

... to participate in this hearing. You have made it difficult, you understand?

Respondent:

Right.

App. 72.

* * *

Hearing Officer:

. . . Here is what we are going to do. I'm going to issue an order that is consistent with what Mr. Odrowski suggested. I think it's very fair to you. It is to give you 15 days to update your information with the Missouri Supreme Court, as required by the applicable court rules and to provide to all of us proof of that. I'm granting you leave to file an amended answer within 15 days.

Respondent:

Okay.

Hearing Officer:

You can have Mr. [Shull] do that for you.

Respondent:

Will do.

Hearing Officer:

Or, alternatively, if you're going to represent yourself you do it, but it has to comply with the court rules to give contact information.

Respondent:

Okay.

Hearing Officer:

. . . Because this matter is dragging on, we've got to get this heard.

Respondent:

Absolutely.

App. 75-76.

The presiding officer entered an order that same day. Respondent was served with a copy of the Order. **App. 82-84.** The Order provides as follows:

Accordingly, IT IS HEREBY ORDERED with respect to Informant's Motion to Strike Respondent's Answer, as follows:

- a) Respondent is granted leave and ordered to file, either pro se or by counsel, her amended answer to the Information, which answer is to be in compliance with court rules in all respects, including complete and appropriate contact information for Respondent or her counsel be included therein, so as to permit the orderly administration of this proceeding;
- b) Respondent is also ordered within 15 days of the date of this order to provide updated contact information with the Missouri Bar, as required, and to provide proof of such to counsel for Informant and the Chief Hearing Officer, undersigned.

If these matters are timely attended to as ordered, then Informant's Motion to Strike Respondent's pleadings will be overruled. If Respondent fails to comply with the agreed matters set forth above, within 15 days of the date of this order, then this court will rule on the Motion to Strike Respondent's Pleadings.

App. 83.

Respondent did not take any of the action directed by the presiding officer. In other words, no amended pleading was filed and no proof of compliance with Rule 6.01(b) was submitted to the Disciplinary Hearing Panel. Further, Respondent failed to appear for her deposition scheduled for May 30, 2013. **App. 93.** Further, Respondent failed to respond to Informant's discovery requests. **App. 93.** Respondent's responses to the discovery requests were due by May 30, 2013 as well. At the hearing on May 15, Respondent stated that she was aware of the pending discovery items. **App. 70.**

On June 4, 2013, Respondent was notified that the OCDC was conducting an investigation of Respondent's trust account following an overdraft notification. Respondent was notified that if the disciplinary proceeding was heading towards a trial, that the Information would be amended to allege a violation of the trust account/safekeeping of property rules. **App. 103-104.**

On June 6, 2013, the presiding officer of the disciplinary hearing panel sent a letter to counsel inquiring about (a) the status of discovery; (b) availability during the first part of July 2013 so that a disciplinary hearing could be scheduled; and (c) the status of the Amended

Answer. **App. 86.** No response to the presiding officer's inquiry was provided on behalf of Respondent. However, on June 4, 2013, Respondent's counsel advised Informant that Respondent intended to surrender her law license instead of participating in the disciplinary hearing process. **App. 101.** Respondent's counsel advised that Respondent "is ready, willing and wants to surrender her license. I will contact the Supreme Court this afternoon and obtain the necessary form and send it in." **App. 101; 103.**

By e-mail to the presiding officer and Respondent's counsel dated June 6, 2013 in response to the presiding officer's letter, Informant advised the panel that the Respondent had not provided the documents requested in discovery, nor had Respondent appeared for a deposition. Informant further advised the presiding officer that Respondent intended to surrender her law license. No response to this e-mail was provided on behalf of Respondent. On June 19, 2013, the presiding officer inquired about the status of Respondent's application to surrender her law license "inasmuch as no amended answer was filed as previously ordered." **App. 91.** No response was provided to the hearing officer on behalf of the Respondent.

On June 26, 2013, Informant filed a supplemental motion to strike Respondent's Answer. **App. 92-105.** As additional grounds to the lack of contact information in the purported Answer, Informant requested the Answer be stricken because of Respondent's failure to attend her own deposition, and her failure to produce the items requested in discovery. **App. 92-94.** The items requested in discovery consisted of (a) the client files for the ten client complaints identified above; and (b) the billing/time entry data, fee agreements,

financial accounting and related information for each of these ten client matters. **App. 95-97.** Respondent failed to produce any files or documents to Informant. Respondent did not respond to the Supplemental Motion to Strike the Answer. Likewise, Respondent had not responded in writing to the initial motion to strike.

A lawyer entered his appearance on behalf of Respondent on or about May 16, 2013. **App. 85.** However, about six weeks later, on July 9, 2013, the lawyer requested permission to withdraw citing that "Respondent has failed to communicate with him and provide him with the necessary information and documentation herein." **App. 106.** A copy of the Motion to Withdraw was served upon Respondent. Respondent did not respond to the Motion to Withdraw. No ruling on the motion was issued.

After giving Respondent an opportunity of more than thirty days to respond to the motion to strike pleading and supplemental motion to strike (and more than two months to comply with the order of May 15, 2013), on July 31, 2013, the Disciplinary Hearing Panel issued a written decision sustaining the motion to strike. **App. 107-111.** Accordingly, Respondent's Answer was stricken. **App. 108.** The decision of the disciplinary hearing panel deemed Respondent to have admitted the allegations of professional misconduct set forth in the Information "including multiple instances of Failure of Communication (Rule 4-1.4); Failure of Diligence (Rule 4-1.3); Failure to Account for Client Money (Rule 4-1.15; 4-1.16, and 4-1.5); Failure of Reasonable Competence (Rule 4-1.1); and Failure to Protect Client's Interests Upon Termination of Attorney-Client Relationship (Rule 4-1.16(d))." **App. 108-109.**

The Disciplinary Hearing Panel found that the allegations of misconduct are serious and "constitute an extended course of conduct requiring imposition of the most significant level of professional discipline." The panel recommended disbarment. **App. 109.**

Pursuant to Rule 5.16(f) the Advisory Committee served the Disciplinary Hearing Panel Decision on the parties by United States Mail on August 2, 2013. **App. 112.** Informant accepted the decision on August 20, 2013. **App. 116-117.** The Advisory Committee served a second notice of the Disciplinary Hearing Panel Decision on the parties by United States Mail on August 20, 2013. **App. 118-119.** Respondent's rejection was received by the Advisory Committee on September 23, 2013. **App. 121.** Respondent's rejection letter again provided no contact information for Respondent.

POINT RELIED ON

RESPONDENT SHOULD BE DISBARRED BECAUSE (A) THE CONDUCT WARRANTS THE MOST SEVERE SANCTION; (B) RESPONDENT CONSENTED TO DISBARMENT PURSUANT TO RULE 5.13(b); AND (C) RESPONDENT’S ANSWER TO THE INFORMATION WAS PROPERLY STRICKEN DUE TO HER FAILURE TO COMPLY WITH SUPREME COURT RULES 5.13, 6.01(b), 55.03(a), 43.01(c) AND 61.01 AND THE ORDER OF THE PRESIDING OFFICER OF THE DISCIPLINARY HEARING PANEL.

In re Ehler, 319 S.W.3d 442 (Mo. banc 2010)

In re Griffey, 873 S.W.2d 600 (Mo. banc 1994)

In re Stewart, 782 S.W.2d 390 (Mo. banc 1990)

In re Staab, 785 S.W.2d 551 (Mo. banc 1990)

Rule 5.13

Rule 5.14(g)

Rule 6.01(b)

Rule 43.01(c)

Rule 55.03(a)

Missouri Supreme Court Rule 61.01

ARGUMENT

RESPONDENT SHOULD BE DISBARRED BECAUSE (A) THE CONDUCT WARRANTS THE MOST SEVERE SANCTION; (B) RESPONDENT CONSENTED TO DISBARMENT PURSUANT TO RULE 5.13(b); AND (C) RESPONDENT’S ANSWER TO THE INFORMATION WAS PROPERLY STRICKEN DUE TO HER FAILURE TO COMPLY WITH SUPREME COURT RULES 5.13, 6.01(b), 55.03(a), 43.01(c) AND 61.01 AND THE ORDER OF THE PRESIDING OFFICER OF THE DISCIPLINARY HEARING PANEL.

Respondent should be disbarred for several reasons. First, the cumulative weight of the underlying disciplinary complaints demonstrates that the most severe disciplinary sanction is warranted. Client money has not been accounted for. Client files have not been returned. Clients’ interests have been abandoned. Respondent has failed to provide diligent and competent legal representation to several clients. These are not isolated incidents. They form a pattern of repeat conduct. The similarities in the complaints amply demonstrate that Respondent poses a huge risk to the public. The recommendation of disbarment urged by the disciplinary hearing panel is well within the sanctions analysis provided by *In re Ehler*, 319 S.W.3d 442 (Mo. banc 2010); *In re Griffey*, 873 S.W.2d 600 (Mo. banc 1994); *In re Stewart*, 782 S.W.2d 390 (Mo. banc 1990); *In re Staab*, 785 S.W.2d 551 (Mo. banc 1990); and *In re Lechner*, 715 S.W.2d 257 (Mo. banc 1986). Disbarment is not too harsh of a sanction for the repeated misconduct involved in the present case.

Second, Respondent consented to disbarment by her failure to timely file an Answer to the Information. Although Respondent did submit a document labeled as an “Answer,” the document was untimely because it was not filed within the thirty-day period allowed by Rule 5.13. The time to file an answer may be extended “**solely for good cause shown.**” See Rule 5.14(g) (emphasis added). Respondent made no showing as to why the untimely pleading should be recognized. In fact, Respondent did not even request that the untimely document be accepted by the Disciplinary Hearing Panel or that the time to respond be extended. Without good cause shown, the purported Answer cannot be given effect. “The failure to file an answer or other response to the Information timely shall be deemed as consent by the Respondent for this Court to enter an order disbarring Respondent without further hearing or procedure.” Rule 5.13.

Third, the disciplinary hearing panel properly refused to accept Respondent’s Answer because it did not comply with Rule 55.03(a) and Rule 43.01(c).

Rule 43.01(c) provides as follows:

Attorneys and self-represented parties shall state in the signature blocks of their pleadings their current mailing addresses, telephone numbers, facsimile numbers, electronic addresses, and Missouri Bar numbers if any. This information shall be kept current at all times. Service may be directed to any of these addresses.

Rule 55.03(a) provides that every pleading must be signed, and further, that below such signature there "shall be printed the signer's name, Missouri Bar Number (if applicable),

address, telephone number, facsimile number, and electronic mail address, if any." The rule further provides that a pleading which omits such a signature "**shall be stricken unless the omission is corrected promptly after being called to the attention of the attorney or party filing same.**" (emphasis added).

Respondent's Answer does not comply with either Rule 43.01(c) or Rule 55.03(a). Although the non-compliance was called to Respondent's attention on at least seven occasions from March 1, 2013 through June 19, 2013, Respondent did not correct the omission. On May 15, 2013, Respondent was ordered to comply with these rules and to likewise demonstrate compliance with Rule 6.01(b). Respondent never complied. Since the Answer did not comply with the applicable rules, the Disciplinary Hearing Panel did not have discretion to overlook the deficiency after calling the matter to her attention. Rule 55.03(a) is a mandatory directive. Therefore, the Answer was properly stricken.

Finally, Respondent's failure to comply with the discovery requests, including the failure to provide sworn testimony to the Informant or to disclose financial records of client money and the status of the clients' legal matters, also serves as compelling grounds to strike Respondent's Answer. The discovery was served upon Respondent in April 2013. Respondent was reminded of her duty to comply with the discovery in May 2013. By June 2013, Respondent had not brought herself into compliance. She offered no excuse for non-compliance. Respondent never arranged to provide testimony as to the ten client matters at issue. The Disciplinary Hearing Panel correctly took action authorized by Mo.R.Civ.P. 61.01(d)(2) and 61.01(f) in striking the Answer.

Respondent was given an adequate opportunity to address the circumstances of the ten client complaints. Respondent declined the opportunity to testify under oath as to the underlying charges of misconduct. She refused to testify. Respondent clearly resisted the opportunity to have this case decided on the merits. Under the circumstances, the procedural mechanism used by the hearing panel to arrive at a recommendation of disbarment did not impair Respondent's right to due process. Respondent is hiding from the truth. The exact magnitude of the harm caused by Respondent may not ever be known because Respondent has deliberately failed to provide factual responses to the complaints and has purposefully refused to produce the subject client files and provide an accounting of client money.

Respondent has been afforded the full protection of due process. Each step of the way, the participants in the disciplinary system bent over backwards to give Respondent notice of the charges of professional misconduct and notice of the procedural concerns as well as an opportunity to correct omissions and an opportunity to be heard on the merits. There were numerous attempts to contact Respondent by phone, U.S. mail and electronic mail. Such efforts were successful, as the record shows that Respondent did indeed receive every notice and communication directed to her.

Respondent received the Information, and was given notice of the facts and circumstances of each of the eleven charges of professional misconduct. Respondent appeared in person at the May 15 hearing on the motion to strike, and was given an opportunity to state her position in full on the record. At such hearing, Respondent acknowledged receipt of the discovery requests. She expressed an understanding of her

obligation to comply. Respondent was given an adequate opportunity to re-submit a proper responsive pleading. Although an amended answer was requested by June 1, the presiding officer's e-mails made it clear that he would have accepted an amended pleading any time in June. Respondent was given the opportunity to utilize defense counsel, but apparently she did not communicate with defense counsel either. All of the procedural rules cited above were communicated in writing to Respondent so there could be no confusion as to her obligations.

The record demonstrates that, although given several opportunities to be heard, Respondent's actual desire to be heard was faint. She was given more than six months to submit any written responses or communications to the hearing panel. The presiding officer attempted to schedule an evidentiary hearing on the merits of the Information, but Respondent did not cooperate with those scheduling efforts. Respondent discouraged actual communication. The only two documents submitted by Respondent—the "Answer" and the letter rejecting the DHP Decision—omit any contact information for Respondent. This was no mere oversight. Respondent purposefully desires to hide from the professional misconduct at issue in this case.

Respondent's conduct shows little regard for her desire to protect her law license. She appears to have been ready and willing to surrender her law license. She allowed her standing to lapse, and remains suspended from the practice of law in Missouri. Respondent's nonchalance bears upon her fitness to practice law in this state. Further, the type of missed deadlines, disobedience to court orders, contumacious disregard for discovery, paperwork

errors and the like demonstrate that Respondent would be a danger to the public if allowed to continue to practice law, not to mention the serious questions posed by the abandonment of client interests and the refusal to account for client money.

CONCLUSION

For the reasons set forth above, the Chief Disciplinary Counsel respectfully requests this Court:

- (a) to find that Respondent's Answer was properly stricken by the Disciplinary Hearing Panel;
- (b) to find that Respondent admitted the underlying factual basis of the alleged misconduct;
- (c) to find that Respondent consented to disbarment under Rule 5.13 by her failure to timely file an Answer or other response to the Information;
- (d) to disbar Respondent; and
- (e) to tax all costs in this matter to Respondent, including the \$2,000 fee pursuant to Rule 5.19(h).

Respectfully submitted,

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CHIEF DISCIPLINARY COUNSEL



By: _____

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ATTORNEY FOR CHIEF
DISCIPLINARY COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of November, 2013, a copy of Informant's

Brief has been sent by First Class mail to:

Heather R. Smith
38 Cherry Street
Liberty, MO 64068
Respondent

Additionally, a true and correct copy of the foregoing has been sent via the Missouri Supreme Court e-filing system to Respondent's counsel:

William E. Shull
Attorney at Law
139 N. Water Street
Liberty, MO 64068
Attorney for Respondent



Kevin J. Odrowski

CERTIFICATION: RULE 84.06(c)

I certify to the best of my knowledge, information and belief, that this brief:

1. Includes the information required by Rule 55.03;
2. Complies with the limitations contained in Rule 84.06(c); and
3. Contains 6,501 words, according to Microsoft Word, which is the word processing system used to prepare this brief.



Kevin J. Odrowski